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19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

21 CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated,

Case No. 4:20-cv-03664-YGR-SVK

24 Plaintiffs,

**GOOGLE LLC’S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE LLC’S MOTION FOR LEAVE
TO FILE A SUR-REPLY TO PLAINTIFFS’
REPLY IN SUPPORT OF THEIR
SUPPLEMENTAL SANCTIONS BRIEF
PURSUANT TO DKT. 624 (DKT. 707-1)**

25 vs.

Judge: Hon. Susan van Keulen, USMJ

26 GOOGLE LLC,

27 Defendant.

28 Case No. 4:20-cv-03664-YGR-SVK

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”)
 3 respectfully seeks to seal certain portions of Google’s Motion for Leave to File A Sur-Reply to
 4 Plaintiffs’ Reply in Support of Their Supplemental Sanctions Brief (“Google’s Motion”), which
 5 contains non-public, highly sensitive and confidential business information that could affect
 6 Google’s competitive standing and may expose Google to increased security risks if publicly
 7 disclosed, including various types of Google’s internal databases, logs, and their proprietary
 8 functionalities, as well as internal metrics. This information is highly confidential and should be
 9 protected.

10 This Administrative Motion pertains to the following information contained in Google’s
 11 Motion:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Exhibit 1 (Google’s Sur-Reply to Plaintiffs’ Reply in Support of Their Supplemental Sanctions Brief)	Highlighted Portions at: 2:5-8, 3:4, 3:6, 3:8, 3:10-15	Google
Trebicka Exhibit A (Excerpts from the Deposition of Rory McClelland)	Highlighted Portions at: 165:3-4, 166:11-13, 166:17-24	Google

19 **II. LEGAL STANDARD**

20 A party seeking to seal material must “establish[] that the document, or portions thereof, are
 21 privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is
 22 “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing
 23 only of sealable material.” *Id.*

24 In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a
 25 showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty.
 26 of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information
 27 in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the
 28

lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under “good cause” standard) (van Keulen, J.). Although the materials that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only consider whether these materials meet the lower “good cause” standard.

III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’ standard where that information could be used to the company’s competitive disadvantage”) (citation omitted). Courts in this district have also determined that motions to seal may be granted as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015

1 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 2 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

3 Here, Google’s Motion comprises confidential and proprietary information regarding highly
 4 sensitive features of Google’s internal systems and operations that Google does not share
 5 publicly. Specifically, this information provides information regarding Google’s internal databases,
 6 logs, and their proprietary functionalities, as well as internal metrics. Such information reveals
 7 Google’s internal strategies, system designs, and business practices for operating and maintaining
 8 many of its important services while complying with its legal and privacy obligations.

9 Public disclosure of the above-listed information would harm Google’s competitive standing
 10 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 11 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a
 12 proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-
 13 cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal
 14 certain sensitive business information related to Google’s processes and policies to ensure the
 15 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,
 16 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales
 17 data because “disclosure would harm their competitive standing by giving competitors insight they
 18 do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8,
 19 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is
 20 not publically available”).

21 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 22 compromise Google’s data logging infrastructure. Google would be placed at an increased risk of
 23 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
 24 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
 25 affects how messages are transmitted” because if made public, it “could lead to a breach in the
 26 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
 27 identified information.

1 The information Google seeks to redact is the minimal amount of information needed to
2 protect its internal systems and operations from being exposed to not only its competitors but also
3 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
4 The “good cause” rather than the “compelling reasons” standard should apply but under either
5 standard, Google’s sealing request is warranted.

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court should seal the identified portions of Google’s Motion.

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